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09/443,233	11/18/1999	JOHN A. HELGENBERG	TN167	6933

7590                    08/28/2002

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ESTREMSKY, GARY WAYNE

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3677

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No. <b>09/443,233</b>	Applicant(s) <b>Helgenberg</b>	
Examiner <b>Gary Estremsky</b>	Art Unit <b>3677</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM

THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Jun 5, 2002

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-8, 14, 15, 19, 22, and 23 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-8, 14, 15, 19, 22, and 23 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachments

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8, 14, 15, 19, 22, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear which “surface” and which “structure” is referred to by recitations of “said surface” and “said structure” at line 7 of claim 4 for example where other independent claims contain similar limitation. ‘as best understood’, “said structure” should be replaced with --said other structure--.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. As best understood, claims 1-3, 6, 8, 14, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,906,031 to Vyse.

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Vyse '031 teaches Applicant's claim limitations including : a "stud" - 11 and particularly including portion 41, "extending outwardly from one of said structures" - from 22, "having an outer surface oriented at an angle to said axis" - 28,30, a "resilient member" - 12, "positioned adjacent a surface of the other one of said structures" - as shown in Fig 5 for example, "toroidal configuration" - as shown in Fig 4 and 6.

As regards claims 2, the frame of the automobile or truck with which the device of the reference is explicitly disclosed to be used reads on broad limitation "structure" as well as further limitation of claim 2, i.e., "frame" where limitation of "extending outwardly from" does not specify direct contact or connection or otherwise specify a particular geometric configuration that can be relied upon to patentably define from the teaching of the reference.

As regards claim 3, inasmuch as the device is disclosed to be used on an automobile or truck, one of ordinary skill in the art would recognize that it must be (either directly or indirectly) "mounted on said frame" of the truck or automobile where limitation is broad enough to include either arrangement.

As regards claim 14, Applicant's attention is drawn to the "predetermined gap" between parts 13,22 as shown in Fig 5.

5. As best understood, claims 1-8, 14, 19. 22, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,639,113 to Goss.

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Goss '113 teaches Applicant's claim limitations including : a "stud" - 12, "extending outwardly from one of said structures" - from 1, "having an outer surface oriented at an angle to said axis" - as shown on the face of the patent, a "resilient member" - 28, "positioned adjacent a surface of the other one of said structures" - as shown, "torroidal configuration" - as shown.

As regards claim 8, part 28 inherently has spring properties in the radial directions and reads on broad limitation of "radial spring". Claims in a pending application should be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974). Accordingly, it is suggested that the limitation be amended as --a coiled metal spring with its central axis arranged in a circle to form said torroidal configuration--.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. As best understood, claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over U.S. Pat. No. 4,906,031 to Vyse.

Although Vyse '031 discloses the device is to be used on a truck or automobile, the reference does not explicitly disclose more than one connection being used. However, it would

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have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide two or more of the devices to allow both inlet and outlet connections or multiple connections in a single line so as to take advantage of the benefits of the device commensurate in scope with the teaching of the reference disclosure.

8. As best understood, claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over 5,639,113 to Goss.

Although Goss '113 discloses the stud to be mounted on the "door" (1), it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art to simply reverse the parts, mounting stud (1) on part 3 and provide the opening or the stud on part 1 since it would not affect the function of the device and it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Whether or not the stud is mounted on part 1 or 3, of the reference, limitation of "radial spring positioned adjacent a surface of said door" is broad since the term "adjacent" is broad and does not require direct contact or specify any particular distance, etc..

***Allowable Subject Matter***

9. The indicated allowability of claims is withdrawn in view of the newly discovered references. While allowable claims cannot be indicated at this time, in order to expedite prosecution as much as possible, it is suggested that independent claims be amended to

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specifically include that the ‘structures’ of the invention are --a door and its frame-- and the spring is --a coiled metal spring with its central axis arranged in a circle to form said toroidal configuration--.

***Response to Arguments***

10. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection. However, the examiner would like to acknowledge that Applicant's arguments with respect to the Hill '217 reference are generally persuasive inasmuch as the present invention is configured to operate in a certain way. While the limitation is broad, essentially requiring structure that is '*adapted to,...*' but not defining any *particular* structure of that configuration; contrary thereto, the prior art reference explicitly discloses that the structure is specifically configured in such a way as to not operate as recited. Accordingly, appropriateness of a rejection based on *inherency* is questionable at best.

Regardless, the scope of the present claims has been carefully examined and is considered broad in view of the prior art which teaches “resilient members” used as detentes, etc and the presently-claimed invention does not define any particular structure of the resilient member where examiner notes that it is well known to use rubber O-rings to obtain a releasable engagement between two structures.. Additionally, the present invention does not define the “structures” in such a way as to confine the claimed invention to be within the disclosed art of closure fasteners.

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In a general sense, it is well known to use a coiled metal spring torroidally arranged to obtain releasable engagement between two structures, even including between a door and its frame. The examiner does note however, that the present claims limit the invention to certain “contact” between the resilient member and one of the structures whereby it appears that careful amendment may allow the claims to patentably define from the prior art. However, since the scope and the allowability of the claims may ultimately depend upon that ‘contact’, it is critical that the claim language be clear as to which surface and structure of the invention are in contact.

Inasmuch as the prior art may be more specific, or the present claims broader, than previously realized, several additional references are made of record below. It is suggested that Applicant carefully consider any amended claims in view of this prior art as carefully as the prior art that has actually been applied in the above rejections.

Since Applicant’s amendment did not necessitate the new grounds of rejection, this Office Action is not made Final.

### *Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. U.S. Pat. No. 2,577,507 to Bergdorf.
- b. U.S. Pat. No. 3,086,803 to Wilson.
- c. U.S. Pat. No. 3,222,096 to Kaman.

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- d. U.S. Pat. No. 3,910,566 to Pedersen.
- e. U.S. Pat. No. 4,750,762 to Corzine.
- f. U.S. Pat. No. 5,049,072 to Lueschen.
- g. U.S. Pat. No. 5,284,369 to Kitamura.
- h. U.S. Pat. No. 5,570,910 to Highlen.
- i. U.S. Pat. No. 5,603,532 to Guest.

12. Submission of any response by facsimile transmission is encouraged. Group 3677's relevant facsimile numbers are :

- 703-872-9326, for formal communications for entry **before Final** action: or
- 703-872-9327, for formal communications for entry **after Final** action.

Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly within our examining group and will eliminate Post Office processing and delivery time and will bypass the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a Deposit Account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) \_\_\_\_ - \_\_\_\_ ) on \_\_\_\_\_  
(Date)

Typed or printed name of person signing this certificate:

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(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is (703) 308 - 0494. The examiner can normally be reached on M - Th from 730 am to 600 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann, can be reached on (703) 306-4115.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

- Technology Center 3600 Customer Service is available at 703-308-1113.
- General Customer Service numbers are at 800-786-9199 or 703-308-9000.

GWE



August 12, 2002

**GARY ESTREMSKY  
PRIMARY EXAMINER**